

Rajendran, Shri N. Ramoowalia, Shri
Balwant Singh Ray, Prof. (Shrimati)
Bharati Reddy, Dr. C. Narayana Roy,
Shri Abani Roy, Shri Jibon Roy, Shri
Joyanta Sengupta, Shri Bratin Singh,
Shri Amar Soundararajan, Shri P.
Sundaram, Shri N. Thalavai Sundaram,
Shri A. Vijaya Raghavan Yadav, Shri
Naresh Yadav, Prof. Ram Gopal
Yadav, Shri Ranjan Prasad

The motion was adopted

SHRI NILOTPAL BASU: Now we walk out.

(At this stage some hon. Members left the Chamber.)

THE DEPUTY CHAIRMAN: We will now take up the Prevention of Money-Laundering Bill, 1999 and the Foreign Exchange Management Bill, 1999. They will be discussed together. Shri Yashwant Sinha.

I. The Prevention of Money-Laundering Bill, 1999

II. The Foreign Exchange Management Bill, 1999

THE MINISTER OF FINANCE (SHRI YASHWANT SINHA) : Madam,
I rise to move:

'That the Bill to prevent money laundering and to provide for
confiscation of property derived from, or involved in,

money-laundering and for matters connected therewith or incidental thereto, as passed by Lok Sabha, be taken into consideration."

Madam, I also move:

'That the Bill to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India, as passed by Lok Sabha, be taken into consideration."

Madam, FERA, 1973 primarily made compensatory transactions known as hawala illegal. The basic aim was to ensure that no one contravened the Exchange Control regulations through unofficial channels. The emphasis was, therefore, on violation of Foreign Exchange regulations, rather than money laundering. Money laundering, Le., the cleansing of proceeds of crimes such as extortions, treason, drug trafficking, gun-running, etc., poses a serious threat to the integrity and sovereignty of a country and also to its financial system. This threat to the nation and its economy has been recognised the world over, and several U.N. and other international conventions have called upon the member-countries to take legislative and other preventive measures to combat the menace of money laundering. As India is a signatory to some of these conventions, a committee was set up to examine and suggest a draft legislation for this purpose.

Based on their report, a separate legislation has been introduced with stringent penal provisions. At the same time, there is a need to consolidate and amend the law relating to Foreign Exchange Management, consistent with the liberalisation policies pursued during this decade. While the provisions of Foreign Exchange Management Bill make foreign exchange contravention a civil law, offences under Prevention of Money-Laundering Bill have been made criminal and will attract stringent punishment. It may be recalled that the Prevention of Money-Laundering Bill, 1998 and the Foreign Exchange Management Bill 1998 were introduced in the 12th Lok Sabha and, thereafter, referred to the Standing Committee on Finance. The

report submitted by the Standing Committee on Finance has been examined and the current Bill has incorporated many of the suggestions made by the Standing Committee. Madam, I move.

THE DEPUTY CHAIRMAN : There are two amendments by Shri Ramachandran Pillai and Shri Bratin Sengupta for reference of the Money-Laundering Bill, 1999 to a Select Committee of the Rajya Sabha.

SHRI S. RAMACHANDRAN PILLAI (Kerala) : I move:

'That the Bill to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto, be referred to a Select Committee of the Rajya Sabha consisting of the following members, namely: -

1. Shri M. Venkaiah Naidu
2. Shri Vayalar Ravi
3. Shri S. Ramachandran Pillai
4. Shri Sanatan Bisi
5. Shri Ranjan Prasad Yadav

6. Shri Gurudas Das Gupta
7. Shri R. Margabandu
8. Prof. Ram Gopal Yadav
9. Dr. Alladi P. Rajkumar
- IO. Shri Fali S. Nariman

with instructions to report by the first day of the next Session."

SHRI BRATIN SENGUPTA (West Bengal) : I move:

'That the Bill to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto, be referred to a Select Committee of the Rajya Sabha consisting of the following members, namely: -

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1. Shri Nilotpal Basu
2. Shri Pranab Mukherjee
3. Shri M. Venkaiah Naidu
4. Shri Amar Singh
5. Shri Jayant Kumar Malhoutra
6. Prof. Ram Gopal Yadav
7. Shri Md. Salim
8. Shri Dipankar Mukherjee
9. Shri S. Ramachandran Pillai
10. Shri Jibon Roy

with instructions to report by the first day of the next Session. "

THE DEPUTY CHAIRMAN : There is one amendment by Shri Ramachandran Pillai for reference of the Foreign Exchange Management Bill, 1999 to a Select Committee of the Rajya Sabha.

SHRI S. RAMACHANDRAN PILLAI : I move:

'That the Bill to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India, be referred to a Select Committee of the Rajya Sabha consisting of the following Members, namely:-

1. Shri M. Venkaiah Naidu
2. Shri Vayalar Ravi
3. Shri S. Ramachandran Pillai
4. Shri Sanatan Bisi
5. Shri Ranjan Prasad Yadav
6. Shri Gurudas Das Gupta
7. Shri R. Margabandu
8. Prof. Ram Gopal Yadav
9. Dr. Alladi P. Rajkumar
10. Shri Fali S. Nariman

with instructions to report by the first day of the next Session."

The questions were proposed.

SHRI N. K. P. SALVE (Maharashtra) : Madam, it is in the fitness of things that the two important measures contemplated, *i.e.* the Foreign Exchange Management Bill, 1999 (FEMA) and the Prevention of Money-Laundering Bill, 1999, are being taken together.

[THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR), in the Chair]

I must hasten to add that so far as FEMA is concerned, it is a welcome measure, which replaces FERA, and is a measure which, I submit, is long overdue and, therefore, very highly commendable and laudable. The measure, I submit, is commensurate, as mentioned by the hon. Finance Minister himself, with the process of economic liberalisation so far as it relates to foreign investment and foreign trade and, particularly, in the light of the fact that our foreign exchange position has been comfortable for quite some time.

However, so far as the Prevention of Money-Laundering Bill is concerned, which, with your permission, I would call the laundering Bill, I have some very grave reservations and some very serious objections. I shall be pointing out, through you, Sir, to the hon. Finance Minister, how some of the most important and decisive recommendations of the Standing Committee have, unfortunately, been overlooked.

The Bill was introduced in 1998 in the Lok Sabha and it was referred to the Standing Committee on Finance for eliciting its views on the Bill. The Finance Committee extensively examined the entire Bill clause-by-clause, invited memoranda and expert opinion. The Committee had sought memoranda from several experts in the Chambers of Commerce. In order to seek clarifications, the Committee also took evidence of the representatives of the Chambers of Commerce and Industry on 22nd September and 13th October, 1998 and the representatives of the Reserve Bank of India, the Ministry of Finance (Departments of Economic Affairs and Revenue) on 23rd September and 20th November, 1998, along with representatives of the Legislative Department. So, it was very widely discussed in a wide cross-section, which is extremely important for the

purpose of the Bill itself, and then the Committee examined the provisions of the Bill clause-by-clause and, after having been convinced of the mentioned objects of the Bill, the Committee approved the same for enactment by Parliament, with certain modifications and recommendations, which are dealt with in detail. Unfortunately, as I shall point out and I submit, very important recommendations of the Standing Committee have been overlooked. And without incorporating those recommendations, I submit, Sir, the Bill is likely to be a very negative measure; in fact, counter-productive to the very objects itself. Therefore, my endeavour today will be to convince this august House and also the Finance Minister that unless the entire measure is reconsidered by him, it is going to create a situation which will be extremely undesirable, pernicious and deleterious towards the process of economic liberalisation.

Sir, the Finance Minister referred to the objects of the Bill. Myself and my party have been in entire agreement with the objects of the Bill, which are laudable and, in fact, as a signatory to the United Nations Resolution on this, we are bound to pass the relevant Bill. What does the Statement of Objects say? What I am going to submit to you is that the Bill goes far, far beyond the objects. In fact, it is contrary to the very object itself, which has been mentioned in the Bill; and if it is so, I am sure, the Finance Minister - I crave his indulgence to what I state here on the floor of the House, very carefully and I am sure he will -- will be convinced that from the point of view of the broader terms of the objects, which we support fully, it is necessary to have a second look at the BOI which is here before the House. Sir, the objects, *inter~alia*, state, "It is being realised, world over, that money laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. Some of the initiatives taken by the international community to obviate such threat are outlined." It further says, "The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which India is a party, calls for prevention of laundering of proceeds of drug crimes and other connected activities and confiscation of proceeds." Sir, the objects further say, "The declaration of laundering of moneys carried through serious crimes a criminal offence." And, then finally, and this is very important, clause 2 of the objects clause says, "In view of the above, there is an urgent need for an enactment of a comprehensive legislation

providing, *inter alia*, for preventing and punishing offences relating to money laundering and connected activities, confiscation of proceeds of crime, disclosure of such transactions by financial institutions, setting up of agencies..." To put it shortly, the object is, primarily, to prevent laundering of proceeds of drug crime and connected activity and confiscation, also to punish offences relating to money laundering and connected activities and confiscation of proceeds of crime.

Sir, I want to submit to you, and you, as one connected with criminal jurisprudence very closely, will appreciate that 95 per cent of the crimes which will ultimately come under this law are far beyond the objects. They have nothing to do with money laundering, in any nature whatsoever. In fact, this Bill, unfortunately, divides the crime itself in two parts. The crime and the moneys involved in the crime. Under the parent law, there is a schedule of offences which are covered by this Bill. In the schedule, there are various offences enumerated under different laws, the Indian Penal Code, the Prevention of Immoral Traffic Act, the Prevention of Corruption Act and the Prevention of Drugs and Psychotropic Substances Act. Now, under the parent law, there is a crime. The crime and also the money involved in the crime. This Bill dissects the crime from the proceeds, and the proceeds will be tried for under this law, and the crime will be tried under the parent law and this schedule, the schedule of offences. If that is so, 95, not 99, per cent of the crimes will wholly be unrelated to laundering. If they are unrelated to laundering, I think, the very Bill is frustrated.

Sir, let us examine clause 2(q) of the Bill. This clause, Sir, defines the proceeds of the crime. Sir, I will be grateful if you will be reading with me. "Proceeds of crime means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property."

Now, let us see clause 3, Sir, which deals with offences of money laundering. It says, "Whoever acquires, owns, possesses or transfers any proceeds of crime, or knowingly enters into any transaction which is related to proceeds of the crime either directly or indirectly; or conceals or aids in the concealment of the proceeds of crime, commits the offence of money laundering."

Money laundering, Sir, as is understood, is illicit money earned by illegal activities being given a doga or a rope or a clog of licitness. The illegal money is sought to be given a legality. That is the process of laundering. Maybe, perhaps, what is stated in clause 3(a) that transfer of any proceeds, would take in laundering, but the rest of the thing is, only if you acquire, if you own, then you are doing a mischief of the law. Without laundering the money, if you own it yourself, if you possess, you are within the mischief of the law. If you enter into any transaction, unrelated to laundering, you are in the mischief of the law. If you conceal or aid, not money laundering, but any proceeds, if you help anyone, conceal or aid in concealment of the proceeds of crime, you are in the mischief of the law. Sir, I fail to understand how the objects of the Bill, which I have pointed out, which relate to prevention of laundering of proceeds of crime are absolutely out of the focus so far as the offence under section 3 is concerned.

Now, refer to the schedule, Sir. It is very important that I refer to the schedule. What are the offences the proceeds of which are covered by clause 3. Now, I come to offences under the Indian Penal Code. There are many offences: Waging or attempting to wage war, conspiracy to commit offences, punishable under section 121, against the State, murder, culpable homicide not amounting to murder, attempt to murder, attempt to commit culpable homicide, etc. etc. One of the offences, Sir, is voluntarily causing grievous hurt to extort property or valuable security or to constrain to do anything which is illegal or which may facilitate the commission of the offence. Then, there are offences under the Immoral Traffic (Prevention) Act: Procuring, inducing, or taking person for the sake of prostitution, detaining a person in premises where prostitution is carried on, seducing or soliciting for the purposes of prostitution. Then, there are offences under the Arms Act. One of the offences covered is, use and possession of firearms and imitation firearms in certain cases. Then, there are offences under the Narcotic Drugs and Psychotropic Substances Act. I have nothing to say about it.

There are offences under the Prevention of Corruption Act. In view of these offences, which are covered by this law, look at clause 3 which deals with offence of money laundering. Any proceeds which you acquire or own or possess, of these offences are within the mischief of the

5.00 P.M

law. Even if there is no money laundering whatsoever, even in the remote sense of the word or in term or, money laundering as it is understood all over the world, you are bringing in offences which are wholly unrelated to money laundering.

Secondly, so many offences, a plethora of offences, have been brought into it, which I think, is extremely improper and unjust because these offences are already to be tried by appropriate courts, under the parent law. They will look into not only the crime itself, but also the money part involved in committing the crime. Now, you are dissecting it and if there are any proceeds of that crime and if you happen to own them, you are covered by this. Look at this, Sir, how they are likely to cover extremely petty offences under this. Imagine, Sir, under section 329 of the offences which are enumerated in the schedule in the Indian Penal Code: voluntarily causing grievous hurt to extract property or valuable security or constrain or to do anything which is illegal, which may facilitate commission of an offence.

In Bombay, people go and collect *hqftha*. They will collect Rs. 100 or Rs.500 or Rs. 1,000. That is covered by this. They may take that money and spend it but having acquired it, they are within the mischief of this law. I will, later on, show you how draconian are the powers of search, seizure, arrest, survey and denial of bail. Bail is virtually denied; a condition is put, Sir, which is a new dimension to the entire criminal jurisprudence. I will refer to it later on. All that I want to submit at this stage of my submission is, you are going far, far beyond the objects of the Bill. You are taking in offences which are extremely petty and which need not merit the kind of punishment and draconian measures which are contemplated in this law.

DR. BIPLAB DASGUPTA (West Bengal) : Sir, it is already five o'clock. We have had an exhaustive debate. We have made a decision on the Insurance Bill. May I request you to adjourn the House now?

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR) : I was already decided that we would be sitting up to six. ...*(Interruptions)* ...

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DR. BIPLAB DASGUPTA : If it was necessary...*(Interruptions)* ...
But, now this is no longer necessary.

SHRI S. RAMACHANDRAN PILLAI : It was decided only for the
IRDA Bill. ... *(Interruptions)* ...

DR. BIPLAB DASGUPTA : We are already exhausted. ...
(Interruptions) ...

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR) : I will give you
permission to recuperate by going out for five minutes.

SHRI S. RAMACHANDRAN PILLAI : We have already finished the
important work. ...*(Interruptions)* ...

AN HON. MEMBER : Sir, you may like to take the sense of the
House. ...*(Interruptions)* ...

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR) : It was
decided in the Business Advisory Committee....*(Interruptions)* ...

SHRI S. RAMACHANDRAN PILLAI : It was decided only with
regard to the Insurance Bill. Sir, it was decided, if necessary... *(Interruptions)*
...

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR) : I am told that
it was decided by the Business Advisory Committee to sit up to six, if
necessary. If the House feels that it is not necessary to consider this urgent
and important Bill by extending our sitting for one hour, then I will take the
sense of the House. ...*(Interruptions)*... Should we continue now?

SOME HON. MEMBERS : No, no. ...*(Interruptions)* ...

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR) : I am getting
repeated 'noes' from that corner. What about this side of the House?

SHRI M VENKAIAH NAIDU (Karnataka) : It is their complaint that they are exhausted. *(Interruptions)* ...

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR) : Mr. Naidu, at 68 I am not exhausted.

SHRI M.VENKAIAH NAIDU: It is so kind of you, Sir.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR) ; Mr. Minister, should we adjourn the House? I seek your suggestion also. ... *(Interruptions)* ...

SHRI YASHWANT SINHA : Sir, I will go by the sense of the House. If the hon. Members are exhausted, I suggest that we leave it for tomorrow to discuss. ...*(Interruptions)* ...

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR) : Mr. Salve has begun his speech and the points he is making as a lawyer are very important. Let him complete. ...*(Interruptions)* ...

SHRI N.K.P. SALVE : Sir, I would like to submit that I may be allowed to speak tomorrow, allow me to commence tomorrow. The preliminary points which I am making are very important. So whatever I have spoken today, the time I have taken today, may not be deducted neither from my....*(Interruptions)* ... That is what I am submitting , Sir.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR) : Mr. Salve, it may not be taken from the Chair. While giving the illustration of Rs.500, you said that even it would come within the purview of this Act. Is it your suggestion that it should be quantified for a particular amount? ... *(Interruptions)* ... I will take your guidance outside. ...*(Interruptions)* ...

SHRI N.K.P. SALVE : I am going to talk of some principles which the hon. Finance Minister must consider and in the light of that we must have a re-look at the Bill ...*(Interruptions)*... We are supporting it as it is. My party is supporting this Bill. But it is very important that he looks into these aspects of the matter and looks into some of the important

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recommendations which the Standing Committee on Finance has made and which have been overruled. This is my submission.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR) : The House stands adjourned till 11.00 A.M. tomorrow.

The House then adjourned at three minutes past five of the clock till eleven of the clock, on Wednesday, the 8th December, 1999